

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

DONALD NASH

APPELLANT,

**v.
STATE OF MISSOURI**

RESPONDENT.

DOCKET NUMBER WD74526

DATE: September 27, 2016

Appeal From:

Jackson County Circuit Court
The Honorable David M. Byrn, Judge

Appellate Judges:

Division Two: Karen King Mitchell, Presiding Judge, Cynthia L. Martin, Judge and Gary D. Witt, Judge

Attorneys:

Donald B. Nash, Appellant Pro Se.

Gregory L. Barnes, Jefferson City, MO, for respondent.

MISSOURI APPELLATE COURT OPINION SUMMARY

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WESTERN DISTRICT**

DONALD NASH,

APPELLANT,

v.

STATE OF MISSOURI,

RESPONDENT.

No. WD74526

Jackson County

Before Division Two: Karen King Mitchell, Presiding Judge, Cynthia L. Martin, Judge and Gary D. Witt, Judge

Donald Nash appeals from the motion court's denial of his 2011 motions to reopen post-conviction proceedings due to abandonment by post-conviction counsel and due to invalid waiver of his post-conviction motions related to his 1982 convictions in two different cases. Nash argues that the motion court erred in denying his 2011 motions to reopen post-conviction proceedings because (1) post-conviction counsel abandoned Nash; (2) post-conviction counsel improperly advised Nash to dismiss his post-conviction motions with prejudice; (3) the motion court had jurisdiction to entertain the 2011 motions to reopen post-conviction proceedings pursuant to the Missouri Constitution; and (4) the motion court failed to issue findings of fact and conclusions of law.

AFFIRM.

Division Two holds: Ordinarily, we are unable to provide meaningful review of an order denying post-conviction relief, including a motion to reopen post-conviction proceedings, without findings of fact and conclusions of law. However, reversal and remand for entry of findings and conclusions is not necessary if the motion itself was insufficient. Nash's 2011 motions to reopen post-conviction proceedings were successive motions in that the 2011 motions asserted the same argument as the Rule 29.15 motion he filed in 1988. As such, pursuant to Rule 29.15(1), the motion court had no authority to consider the 2011 motions and properly dismissed them without issuing findings of fact and conclusions of law. We need not reach the merits of Nash's first and second points on appeal because those points concern the merits of the 2011 motions.

Opinion by Cynthia L. Martin, Judge

September 27, 2016

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